

ISSUE DATE: December 31, 1997

DOCKET NO. P-5535/NA-97-993

ORDER APPROVING CERTIFICATE OF AUTHORITY TO PROVIDE LOCAL NICHE  
SERVICES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Gregory Scott  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Request by Marcus Fiber  
Link, L.L.C., for a Certificate of Authority to  
Provide Local Niche Services

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**PROCEDURAL HISTORY**

On July 1, 1997, Marcus Fiber Link, L.L.C., (Marcus or the Company) filed an application for a certificate of authority to provide local service pursuant to Minn. Stat. § 237.16. Marcus sought authority to offer local high capacity telecommunications, services consisting of point to point broadband conveyance and switching of voice and data, under the “niche service” category in Minn. Rules, part 7812.0100, subp. 31. Marcus stated that it would provide service in the exchanges currently served by US WEST Communications, Inc. and GTE Minnesota, and provided appropriate maps of its proposed service territory. Marcus stated that it intends to provide local niche services under individually case based (ICB) contracts with its customers; Marcus therefore did not file proposed tariffs with its petition.

On October 31 and November 18, 1997, the Department of Public Service (the Department) filed comments. The Department stated that Marcus had informed the Department that it now intends to provide service only to the Apple Valley, Rosemount, Lakeville, and Farmington exchanges served by Frontier Communications of Minnesota, Inc. (Frontier). Marcus had filed the appropriate service area maps to reflect this change. The Department recommended that the Commission approve Marcus’s application. The Department also recommended that the Commission require Marcus to file its ICB contracts with the Department, with sufficient cost information to show that similarly situated customers receive the same price for the same service.

On December 16, 1997, the matter came before the Commission for consideration.

**FINDINGS AND CONCLUSIONS**

**I. THE LEGAL STANDARD FOR GRANTING A CERTIFICATE TO PROVIDE LOCAL SERVICE**

The telecommunications statute sets threshold certification requirements for all providers of telecommunications service:

No person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources

to provide the proposed telephone services and a certificate of authority from the commission under the terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

Minn. Stat. § 237.16, subd. 1(b).

The local competition rules<sup>1</sup> promulgated by the Commission set certification requirements for different categories of telecommunications services. For local niche service, the rules require the petitioner to describe the petitioner's business organization, experience, and expertise in providing telephone or telecommunications service. The petitioner must also submit a balance sheet indicating its current financial status. The rules require the Commission to apply the criteria identified in Minn. Rules, part 7812.0300 (which governs local facilities-based certification) and Minn. Rules, part 7812.0350 (which governs local resale service certification) to the extent those criteria are relevant to providing the local niche services the petitioner intends to provide. Minn. Rules 7812.0500.

## **II. COMMISSION ACTION**

The Department examined the Company's financial statements and managerial histories and concluded that Marcus possesses the requisite technical, managerial, and financial capacity to provide service in Minnesota. No party contested this conclusion.

The Commission agrees with the Department that the Company has made a threshold showing that it meets the certification requirements of the statute and the rule. It has demonstrated that it has the technical, managerial, and financial resources to provide the services described in its application and to comply with applicable laws, rules, and orders.

Minn. Stat. § 237.74 provides for the regulation of telecommunications carriers such as Marcus. Under Minn. Stat. § 237.74, subd. 3, the Commission may allow ICB pricing when differences in the cost of providing a service or service element justify a different price for a particular customer or group of customers. The Department recommended that the Commission require Marcus to file its ICB contracts with the Department with sufficient cost information to determine if similarly situated customers will receive the same price. In order to ensure that the Company's ICB pricing meets the requirements of Minn. Stat. § 237.74, subd. 3, the Commission will order Marcus to comply with the Department's recommendation.

The Commission will also condition approval of the certificate of authority upon the Company's submission, and Commission approval, of final tariffs.

Without these documents the Commission cannot determine full compliance with the local competition rules. Neither can it make a final determination that the Company's service will meet the statutory standard of being "consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules." Minn. Stat. § 237.16, subd. 1 (b). For these reasons, the Commission will require the Company to comply with the aforementioned conditions as part of its certification process.

## **ORDER**

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<sup>1</sup>Minn. Rules, Chapter 7812.

1. The Commission grants Marcus a certificate to provide local niche service pursuant to Minn. Stat. § 237.16, subd. 1 and Minn. Rules, part 7812.0500, in the Apple Valley, Rosemount, Lakeville, and Farmington exchanges currently served by Frontier Communications of Minnesota, Inc. The certificate is subject to the following conditions:
  - a. Commission review and approval of the Company's final tariffs and price lists, including terms and conditions and implementation dates;
  - b. the application of applicable Minnesota rules and statutes, including Minn. Rules, parts 7812.0050 to 7812.2300, and any subsequent rules being developed in Docket Nos. P-999/R-97-608 and P-999/R-97-609;
  - c. the Company's continued maintenance of maps with the Department of Service. The maps should distinguish clearly between operational and nonoperational areas;
  - d. the Company's filing of its ICB contracts, with sufficient cost information for the Department to determine that similarly situated customers receive the same price.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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